

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

EARVIN R. DAVIS,

Plaintiff,

Case No. 2:23-cv-170

v.

Honorable Paul L. Maloney

HEIDI WASHINGTON et al.,

Defendants.

**OPINION**

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint for failure to state a claim.

**Discussion**

**I. Factual Allegations**

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Chippewa Correctional Facility (URF) in Kincheloe, Chippewa County, Michigan. The events about which he complains occurred at that facility. Plaintiff sues MDOC Director Heidi

Washington, the MDOC, Warden James Corrigan, Unknown Parties #1 named as All Administrative Staff of Chippewa Correctional Facility, Unknown Parties #2 named as All Corrections Officers of Chippewa Correctional Facility, and Unknown Party named as Surety. Plaintiff states that he is suing all Defendants in their individual and official capacities.

Plaintiff contends that he is entitled to resentencing under *People v. Stovall*, 510 Mich. 301 (2022), which held that a life sentence with the possibility of parole for a person who was a juvenile when the offense was committed violates Article 1, § 16 of the Michigan Constitution. *Id.* at 308. Plaintiff asserts that he brought a habeas corpus action in the 50th Circuit Court in Chippewa County on September 26, 2022, and was instructed that he must bring this claim in a 6.500 Motion. Plaintiff does not state whether he subsequently filed such a motion. Nor does Plaintiff describe any other actions he pursued in the state courts. However, a review of the public record of Plaintiff's criminal case shows that an order granting motion for relief from judgment was issued on September 6, 2023, and that Plaintiff is scheduled for resentencing on October 19, 2023. *See Michigan v. Davis*, No. 91-010838-01-FC (Chippewa Cnty. Cir. Ct.), [https://www.3rdcc.org/odyssey-public-access-\(opa\)](https://www.3rdcc.org/odyssey-public-access-(opa)) (select "Accept"; select "Criminal Cases" and select "Criminal Case Records"; search Last Name "Davis", First Name "Earvin"; select Case Number 91-010838-01-FC) (last visited Oct. 3, 2023).<sup>1</sup>

Plaintiff states that his judgment of sentence is void as of the Michigan Supreme Court's decision in *Stovall*, thus Defendants have no jurisdiction to continue holding him. Consequently, Plaintiff asserts that his continued confinement violates his rights under the Eighth Amendment, as well as the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment.

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<sup>1</sup> "[I]t is well-settled that '[f]ederal courts may take judicial notice of proceedings in other courts of record[.]'" *Lyons v. Stovall*, 188 F.3d 327, 332 n.3 (6th Cir. 1999) (quoting *Granader v. Public Bank*, 417 F.2d 75, 82–83 (6th Cir. 1969) *cert. denied*, 397 U.S. 1065 (1970)).

Plaintiff seeks a declaratory ruling that Defendants have violated his rights under the United States Constitution. Plaintiff also seeks compensatory and punitive damages. Finally, Plaintiff seeks injunctive relief compelling Defendants to release Plaintiff on a tether until such time as he is resentenced, or alternatively to transfer Plaintiff to a facility that is lawfully empowered to confine him, such as the Wayne County Jail.

## **II. Failure to State a Claim**

A complaint may be dismissed for failure to state a claim if it fails “to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff’s allegations must include more than labels and conclusions. *Id.*; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a “‘probability requirement,’ . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(ii)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

**A. Claims Implicating Fact or Duration of Confinement**

As noted above, Plaintiff is asserting that his sentence is void and that his continued confinement violates his rights under the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment. A challenge to the fact or duration of confinement should be brought as a petition for habeas corpus and is not the proper subject of a civil rights action brought pursuant to § 1983. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that, “when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus”). Therefore, to the extent that Plaintiff’s complaint challenges the fact or duration of his incarceration, it must be dismissed. *See Adams v. Morris*, 90 F. App’x 856, 858 (6th Cir. 2004) (holding that dismissal is appropriate where § 1983 action seeks equitable relief and challenges fact or duration of confinement); *see also Moore v. Pemberton*, 110 F.3d 22, 23–24 (7th Cir. 1997) (discussing that reasons for not construing a § 1983 action as one seeking habeas relief include (1) potential application of *Heck v. Humphrey*, 512 U.S. 477 (1994), (2) differing defendants, (3) differing standards of § 1915(a)(3) and § 2253(c), (4) differing fee requirements, (5) potential application of second or successive petition doctrine or three-strikes rules of § 1915(g)).

Moreover, to the extent Plaintiff seeks injunctive, declaratory, and monetary relief for alleged violations of constitutional rights related to his continued incarceration, his claim is barred by *Heck*, 512 U.S. at 486–87, which held that “in order to recover damages for allegedly unconstitutional conviction or imprisonment, *or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid*, a § 1983 plaintiff must prove that the conviction or sentence has been [overturned].” *See Edwards v. Balisok*, 520 U.S. 641, 646 (1997) (emphasis in original). In *Heck*, the Supreme Court held that a state prisoner cannot make a cognizable claim under § 1983 for an allegedly unconstitutional conviction or for “harm caused by actions whose unlawfulness would render a conviction or sentence invalid” unless a prisoner shows that the conviction or sentence has been “reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” 512 U.S. at 486–87 (footnote omitted). The holding in *Heck* has been extended to actions seeking injunctive or declaratory relief. *See Edwards*, 520 U.S. at 646–48 (declaratory relief); *Clarke v. Stalder*, 154 F.3d 186, 189–90 (5th Cir. 1998) (concluding that a claim for injunctive relief intertwined was with a request for damages); *Wilson v. Kinkela*, No. 97-4035, 1998 WL 246401, at \*1 (6th Cir. May 5, 1998) (injunctive relief). Plaintiff’s assertion that he is entitled to resentencing pursuant to the Michigan Supreme Court’s holding in *Stovall* calls into question the validity of his sentence. Therefore, those allegations would be barred under *Heck* until his criminal conviction has been invalidated.

#### **B. Claim that Conditions of Confinement Violate Equal Protection**

Plaintiff also asserts that his equal protection rights are being violated because he has not been transferred to the Wayne County Jail for resentencing but continues to be held at URF while

other similarly situated prisoners have been either released or transferred back to the Wayne County Jail to be resentenced.<sup>2</sup>

The Equal Protection Clause of the Fourteenth Amendment provides that a state may not “deny to any person within its jurisdiction the equal protection of the laws,” which is essentially a direction that all persons similarly situated should be treated alike. U.S. Const., amend. XIV; *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). A state practice generally will not require strict scrutiny unless it interferes with a fundamental right or discriminates against a suspect class of individuals. *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976). Plaintiff does not allege that a fundamental right is implicated in this case or that he is a member of a suspect class; his claims therefore are not subjected to strict scrutiny.

The threshold element of an equal protection claim is disparate treatment. *Scarborough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 260 (6th Cir. 2006). Here, Plaintiff alleges in a conclusory manner that Defendants violated his equal protection rights “by not affording Plaintiff the same treatment that others receive when they are awaiting a lawful sentence by a tribunal.” (ECF No. 1, PageID.5.) Plaintiff claims that others “who have been similarly situated have received lawful process when their sentence[s] were declared void” because “[t]hey were either released or transferred back to the Wayne County jail to be re-sentenced.” (*Id.*) Plaintiff uses the term “similarly situated” to describe other inmates, however, Plaintiff does not allege any facts to support this conclusory assertion and he does not allege that the other inmates were similarly situated in all relevant respects. Moreover, the Court cannot reasonably infer that the other inmates were similarly situated in all relevant respects from the facts alleged.

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<sup>2</sup> As noted above, Plaintiff has been scheduled for resentencing on October 19, 2023.

Furthermore, to the extent that Plaintiff intended to bring an equal protection claim in a class-of-one case, Plaintiff must again demonstrate “intentional and arbitrary discrimination” by the state; that is, he must demonstrate that he “has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *see also Nordlinger v. Hahn*, 505 U.S. 1, 10–11 (1992); *United States v. Green*, 654 F.3d 637, 651 (6th Cir. 2011). “[T]he hallmark of [a ‘class-of-one’] claim is not the allegation that one individual was singled out, but rather, the allegation of arbitrary or malicious treatment not based on membership in a disfavored class.” *Davis v. Prison Health Servs.*, 679 F.3d 433, 441 (6th Cir. 2012) (emphasis removed) (quoting *Aldridge v. City of Memphis*, 404 F. App’x 29, 42 (6th Cir. 2010)); *see also Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 592 (9th Cir. 2008) (“The ‘class of one’ theory . . . is unusual because the plaintiff in a ‘class of one’ case does not allege that the defendants discriminate against a *group* with whom she shares characteristics, but rather that the defendants simply harbor animus against her *in particular* and therefore treated her arbitrarily.” (emphasis in original)). A plaintiff “must overcome a ‘heavy burden’ to prevail based on the class-of-one theory.” *Loesel v. City of Frankenmuth*, 692 F.3d 452, 462 (6th Cir. 2012) (citing *TriHealth, Inc. v. Bd. of Comm’rs, Hamilton Cnty.*, 430 F.3d 783, 791 (6th Cir. 2005)). “Unless carefully circumscribed, the concept of a class-of-one equal protection claim could effectively provide a federal cause of action for review of almost every executive and administrative decision made by state actors.” *Loesel*, 692 F.3d at 462 (quoting *Jennings v. City of Stillwater*, 383 F.3d 1199, 1210–11 (10th Cir. 2004)).

The threshold element of an equal protection claim is disparate treatment. *Scarborough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 260 (6th Cir. 2006). “To state an equal protection claim, a plaintiff must adequately plead that the government treated the plaintiff ‘disparately as compared

to similarly situated persons and that such disparate treatment either burdens a fundamental right, targets a suspect class, or has no rational basis.” *Ctr. for Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir. 2011) (quoting *Club Italia Soccer & Sports Org., Inc.*, 470 F.3d at 298)). “‘Similarly situated’ is a term of art—a comparator . . . must be similar in ‘all relevant respects.’” *Paterek v. Vill. of Armada*, 801 F.3d 630, 650 (6th Cir. 2015) (quoting *United States v. Green*, 654 F.3d 637, 651 (6th Cir. 2011)); *see also Nordlinger*, 505 U.S. at 10; *Tree of Life Christian Sch. v. City of Upper Arlington*, 905 F.3d 357, 368 (6th Cir. 2018) (“A plaintiff bringing an equal protection claim must be ‘similarly situated’ to a comparator in ‘all relevant respects.’”).

Plaintiff in this case merely makes a conclusory assertion that he is being treated differently from other prisoners in his situation. However, Plaintiff fails to allege any specific facts in support of this claim. Conclusory allegations of unconstitutional conduct without specific factual allegations fail to state a claim under § 1983. *See Iqbal*, 556 U.S. at 678–79; *Twombly*, 550 U.S. at 555. Therefore, for all of the reasons set forth above, Plaintiff’s equal protection claim is properly dismissed.

### **Conclusion**

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that to the extent Plaintiff’s complaint challenges the fact or duration of his confinement, it will be dismissed without prejudice under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). However, Plaintiff’s equal protection claim will be dismissed with prejudice for failure to state a claim, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). Although the Court concludes that Plaintiff’s claims are properly dismissed, the Court does not conclude that any issue Plaintiff might raise on appeal would be frivolous.



*Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court does not certify that an appeal would not be taken in good faith. Should Plaintiff appeal this decision, the Court will assess the \$505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610–11, unless Plaintiff is barred from proceeding *in forma pauperis*, *e.g.*, by the “three-strikes” rule of § 1915(g). If he is barred, he will be required to pay the \$505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A judgment consistent with this opinion will be entered.

Dated: October 4, 2023

/s/ Paul L. Maloney  
Paul L. Maloney  
United States District Judge